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8 **Attorney for Plaintiff Dongbu Insurance Company, Ltd.**

9
10 **IN THE UNITED STATES DISTRICT COURT FOR THE**
11 **NORTHERN MARIANA ISLANDS**

12 **DONGBU INSURANCE COMPANY,**
13 **LTD.,**

14 **Plaintiff,**

15 **v.**

16 **OKP (CNMI) CORPORATION and**
17 **JOAQUIN Q. ATALIG,**

18 **Defendants.**

Civil Action No. 08-0002

DECLARATION OF
THOMAS E. CLIFFORD
(June 25, 2008)

Notice of Hearing:
July 10, 2008
1:30 p.m.

19 I, THOMAS E. CLIFFORD, state as follows:

- 20 1. I am the counsel of record for Dongbu Insurance Company, Ltd. ("Dongbu") in this
21 matter.
22 2. I am over the age of eighteen years and competent to make this Declaration. I make
23 the following statements based on personal knowledge unless specifically indicated
24 otherwise below.
25 3. I first met with some of OKP's counsel in this matter on or about October 23, 2008.

26 Based on a review of my notes made at and shortly after the meeting, my

1 recollection is refreshed that at this first meeting, I repeatedly stated: a) Dongbu
2 was expressly reserving all of its rights under the policies and Dongbu was not
3 asking OKP (CNMI) Corporation ("OKP") to waive any of its rights under the
4 policies; b) notice was obviously an issue since OKP had been actively defending
5 the case for months; c) initially, Dongbu did not see how there could be any
6 coverage under any of the policies for the various claims presented; d) we would
7 exchange copies of all the policies and take a careful look at the issues; and e) we
8 would work to resolve the matter by agreement, but that if that were not possible,
9 Dongbu would initiate a coverage action.
10

- 11 4. Dongbu's first written response to OKP's tender was my March 5, 2007 letter (other
12 than non-substantive emails as far as I can find based on my review to date).
13
14 5. Attached hereto as **Exhibit A** is a true and correct copy from the Dongbu claims file
15 forwarded to me of OKP's August 14, 2006 facsimile (this was sent by OKP, and so
16 presumably authentication is not an issue).

17 **Submitted pursuant to Federal Rule of Civil Procedure 56(f)**

- 18 6. As explained in Dongbu's summary judgment briefs, Dongbu is entitled to entry of
19 judgment in its favor in that the Court should determine that Dongbu has no duty to
20 defend OKP in the Atalig lawsuit as a matter of law under the applicable policies
21 and the complaints in the Atalig case.
22
23 7. However, if the Court disagrees with this position, then Dongbu would need the
24 opportunity to conduct discovery once the underlying case has been resolved, and as
25 to any facts not conclusively established in that case. In other words, Dongbu
26

1 cannot conduct discovery in this case at this time because that discovery would be
2 potentially prejudicial to OKP in the underlying case.

3 8. Dongbu would need to conduct discovery regarding a variety of fact issues if the
4 Court denies Dongbu's motion. That is, there are fact issues that Dongbu needs
5 discovery on that should preclude the court granting OKP's motion for partial
6 summary judgment:

7 a. If the Court intends to allow the use of extrinsic evidence to determine the
8 duty to defend, then Dongbu would need the opportunity to conduct discovery
9 regarding the actual facts in the underlying case, instead of simply relying on
10 OKP's version of events. Specifically, I have spoken with Michael Dotts, as
11 counsel for Mr. Atalig, and he has confirmed that Mr. Atalig does contest a
12 number of facts that OKP has presented. Additionally, this approach is
13 consistent with the case law, as discussed in Dongbu's consolidated brief, being
14 filed on this date.

15 b. Dongbu would also need to conduct discovery on a number of policy terms and
16 conditions, including but not limited to each term and condition referenced in
17 Dongbu's coverage letters and its complaints in this lawsuit.

18 c. As to notice and prejudice, these points include the circumstances surrounding
19 OKP's work on Rota (especially timeframes), the circumstances surrounding
20 OKP's notice of the alleged property damage and why it retained its own counsel
21 instead of tendering its defense to Dongbu, and why it never requested coverage
22 in connection with the Atalig lease.
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1 d. As to 'care, custody and control,' 'direct connection' and similar issues,
2 Dongbu would need to conduct discovery regarding the nature and scope of
3 OKP's work on the airport project, at the Atalig property and elsewhere on Rota.
4 e. As to punitive damages and intentional conduct, the nature and extent of bad
5 conduct (*if any*) by OKP and its employees.
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7
8 I declare under penalty of perjury that the foregoing is true and correct. Signed this 25th day
9 of June, 2008 on Saipan, Commonwealth of the Northern Mariana Islands.

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11 
12 THOMAS E. CLIFFORD
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Exhibit A

**OKP (CNMI) CORPORATION****FAX TRANSMISSION**

To: Moylan's Insurance Underwriting, **Date:** Aug 14, 2006
Inc.

Attn: Ms. Cecilia A. Anas **Ref:** OKP/FAX/O/06-024

From: Allen Yee (Fax: 532 0169) **Fax:** (671) 477-1837

CC: Tamara L. Hunter **Pages:** 1

☐ Urgent ☐ For Info ☒ Please attend ☐ Please Reply

Rota International Airport Runway 09/27 Extension Phase 1
Authorization Letter

Please be informed that OKP (CNMI) Corporation have engaged MAILMAN & KARA, LLC as our attorneys for the Atallig v. OKP (CNMI) Corporation, Civil Action No. 06-0119 @.

Would appreciate if you could assist in providing the Insurance documents as requested by them.

Regards,


Allen Yee
Project Manager

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